IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 6634 OF 2005

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI, J.
FEBRUARY 07, 2007.

Heard Shri Sambre, learned counsel for the petitioners – plaintiffs and Shri Kankale, learned AGP for the respondents.

Shri Sambre, learned counsel contends that no doubt last chance was given to the petitioners – plaintiffs to adduce evidence but having realised that there were some errors in the reference as filed, those errors were sought to be rectified by mentioning correct amounts. He further states that the issue of limitation was also required to be met and therefore the petitioners wanted to point out that notice under Section 12(2) of the Land Acquisition Act was served upon them on 19.4.2002 when they went to the office of Land Acquisition Officer to make enquiries. He states that amendment application was

essential and should not have been rejected only on the ground that it was filed for alleged dilatory tactics. He further argues that no opportunity was given to the petitioners to point out all these because the impugned order has been passed behind their back.

The learned AGP appearing for the respondents states that several chances were given to the petitioners to enter witness box and they avoided to do so. He further argues that in these circumstances, when last chance was given even on that date, they did not enter the witness box but preferred to file application for amendment and he argues that such an application could have been moved even on earlier occasion. He further argues that though the petitioners were not heard by the lower court, the respondents were also not given any opportunity to point out whether the amendment application should be allowed or not. He, however, states that there is no jurisdictional error or perversity in the order. He states that in Land Acquisition Act, the petitioner stands to gain by protracting the reference proceedings.

In these circumstances, after perusal

of application for amendment as filed, I find that in the said amendment application, the petitioners only wanted to replace certain amounts and they have stated that there were some Arthmatical mistakes while calculating the same. He also wanted to add one para to point out that their reference was within limitation. The Court has not recorded any findings in this respect and present respondents were also not given any opportunity to point out whether the amendment should have been allowed or not. The application has been rejected merely because last chance was given to present petitioners to lead their evidence.

In the circumstances, the impugned order dated 28.11.2005 is hereby quashed and set aside. The application moved by the present petitioners for amendment is restored to file of 4th Ad hoc District Judge, Yavatmal, in L.A.C. No. 61 of 2004, however, the same is subject to payment of cost of Rs.2,000/- by the petitioners to the respondents within a period of four weeks before the lower court. If the costs are so paid, the Court below shall permit the respondents to file appropriate reply to

that application and thereafter shall proceed to hear the parties and pass appropriate orders in accordance with law.

The proceedings in L.A.C. No.61 of 2004 are hereby expedited and after deciding the application for amendment either way, the Court below shall proceed to decide the L.A.C. itself on merits in accordance with law as early as possible and in any case within a period of eight months. Writ Petition is disposed of accordingly. No order as to costs.

JUDGE

*GS.